IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5440 OF 2006

WITH

WRIT PETITION NO. 5441 OF 2006

WITH

WRIT PETITION NO. 5767 OF 2006

Smt. Alka Vasant Khomane
and others. ... Petitioners.

V/s.

The State of Maharashtra
and others. ... Respondents.

Shri Girish Kulkarni with Shri Anilkumar Joshi and Mrs.Swati V. Deshpande for the petitioners.

Shri V.V. Tulzapurkar, Senior Advocate with Shri G.S. Godbole for respondent Nos. 3,4,6,7A & 9A to 9C.

Shri S.R.Nargolkar, AGP for respondent Nos.1A to 1D.

Shri S.D.Paigude for respondent No.5.

CORAM : R.M.S. KHANDEPARKAR,J.

DATED : 12.10.2006.

P.C. :

In all these petitions, the petitioners challenge the order passed by the Additional Commissioner, Pune Division, Pune, in appeals filed by the petitioners against the orders passed by the Collector, rejecting the application filed by the petitioners for resumption of land under section 59 of the Maharashtra Land Revenue Code, 1966.

2. The facts relevant for the disposal of these petitions are that the land in question was Watan land and on abolition of Watans under the Bombay Inferior Village Watans Abolition Act, 1958, (`Watan Abolition Act' for short) was regranted to the predecessors of the petitioners in terms of section 5(1) of the said Watan Abolition Act, after due compliance of all the requirements of the said section. After regrant of the land, 2 sale-deeds came to be executed in the year 1966, transferring the land in question in favour of the

respondent Nos. 2 to 9. The sale deeds were registered under Registration Act, 1960 and Government was paid 13 times the assessment prior to the execution of the sale deeds in terms of requirement of sub-section (1) of section 5. Sometime in 1988, the petitioners filed the civil suit challenging the transfer of land in question in favour of the respondents *inter alia* alleging that sale-deeds were obtained by fraud. In the year 2002, the plaint was amended by including challenge on the ground of violation of provisions of section 5(3) of the Watan Abolition Act. In the said suit, an application for temporary injunction was filed which came to be dismissed by the trial Court. The matter was carried to the lower appellate Court without any success and thereafter the petitioners filed Writ Petition No.6870/2004.

3. The said writ petition No.6670/2004 came to be rejected on 10th January 2005 at the admission stage itself. Consequently, the petitioners filed application under section 59 of the Land Revenue Code, 1966 (`the Code' for short) for eviction of the respondent Nos. 2 to 9 from the suit

land. Meanwhile, the respondent Nos. 2 to 9 filed the application for N.A. permission in relation to the suit land which was sought to be objected by the petitioners.

4.? The application filed by the petitioners under section 59 of the Code was disposed of by the Collector along with application of the respondents for N.A. permission on 18th August 2005. The petitioners carried the matter in appeal before the Additional Commissioner, Pune Division, Pune, challenging the order passed by the Collector on various grounds including ground of absence of hearing being granted to the petitioner before passing the order granting N.A. Permission and rejection of the application under section 59 of the Code. By the impugned order, the Additional Commissioner after hearing the parties on all issues dismissed the appeal. Hence this petition.

5. Learned Counsel appearing for the petitioners referring to section 5 of the Watan Abolition Act and section 59 of the Code and placing reliance in the decisions of the Apex

Court in the matter of (1) ***Murlidhar D. Kesarkar vs. Vishwanath Pandu Barde & anr***, reported in 1995(2) BCJ (SC) 465 and (2) ***Sri Manchegowda vs. State of Karnataka*** reported in AIR 1984 SC 1151 and of the Division Bench of this Court in the case of ***Vithal Kondhalkar vs. The State of Maharashtra & ors.*** reported in 1981 Bom.C.R. 32, submitted that since transfer of land had been in violation of the provisions of section 5(3) of the Watan Abolition Act, the transfer was *ab-initio* void and, therefore, land has to be resumed in favour of the petitioners and obligations of the Collector ought to have been complied with by the concerned authority in terms of provisions of section 59 of the Code. On the above background, Collector had disposed of the application without giving hearing to the petitioners and both the aspects which have not been considered, ought to have been considered by the Additional Commissioner. The lower appellate authority had acted illegally and it, therefore, disclosed jurisdictional error which would warrant interference in exercise of writ jurisdiction under Article 227 of the Constitution of India.

6. Learned Counsel for the respondents on the other hand submitted that already a suit has been filed by the petitioners for declaring sale-deeds to be null and void and in case the petitioners succeed in the suit, the petitioners shall be entitled for restoration of the land, but the question of resumption of land under section 5(3) of the Watan Abolition Act, does not arise at this stage, nor the respondents who are in possession of the land and against whom petitioners have not been able to secure the order of injunction, cannot be denied the right to enjoy the property as lawful owners thereof, including right for N.A. Permission, and considering the same, no fault can be found with the impugned order.

7. The learned Counsel for the petitioners has also drawn attention to the order dated 10th January 2005 in Writ Petition No.6870/2004 while contending that the petitioners are lawfully entitled for resumption of land in proceeding initiated under section 59 of the Code.

8.? Section 5(3) of the Watan Abolition Act provides that the occupancy of the land regranted under sub-section (1) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine. It is not in dispute that the amount payable to the State Government in terms of assessment made by the Government was already paid prior to the execution of the sale-deeds pursuant to which regrant of the land was confirmed in favour of the predecessor of the petitioners. As far as contention of the petitioners about absence of prior order for transfer of property in terms of section 5(3) is concerned, though, undoubtedly, it nowhere discloses any specific order to the effect that there had been consent granted in terms of section 5(3) of the Watan Abolition Act prior to execution of sale-deeds, the record discloses the mutation entry in relation to property in question where it has been recorded:

"जुन्या शर्तीवर रिगँट करण्यात

आले आहे. हुकूम फाईलीस आहे."

9.? The above entry is to the effect that the regrant has been confirmed on the condition similar to earlier and the order is on record. Perhaps, as sought to be contended on behalf of the petitioners, there may be scope for adjudication as to whether the said order on record, refers to order of regrant only or it also refers to order relating to consent for transfer; however, the fact remains that the petitioners had already filed a suit contending that the sale-deeds were obtained by fraud and by amendment transfer is also sought to be challenged being illegal on account of non-compliance of provisions of section 5(3) of the Watan Abolition Act and the said issues are the subject matter of the civil suit, besides, the concerned authorities have clearly observed their consent to such transfer.

10.? In the background of the above facts and in the absence of petitioners making out any prima facie case, question of interference in the impugned order in writ jurisdiction and in exercise of powers under Article 227 of the Constitution of India, does not arise.

11.? As regards contention about failure on the part of the Collector to give hearing to the petitioners in the matter of objection raised by the petitioner for grant of N.A. permission as well as in relation to application under section 59 of the Code, undisputedly petitioners were heard by the appellate authority on the relevant issues which were sought to be raised by the petitioners. It is not the case of the petitioners that the appellate authority failed to consider the point which was sought to be raised by the petitioner in the course of hearing of the appeal. In this background, merely because the lower authority had not given hearing to the petitioner on the point of grant of application for N.A. permission to the respondent Nos.2 to 9 as well as dismissal of the application under section 59 of the Code, that would not justify interference in the impugned order. The petitioners had enough opportunity to put forth their case for consideration before the appellate authority, who enjoys powers of the original jurisdiction. Besides, once prima facie, the property is disclosed to have been transferred by the petitioners

predecessors themselves and the petitioners being claiming right to property by stepping in the shoes of their predecessors and at the time of conveyance of the property, the petitioners predecessors were paid necessary consideration for transfer of property and the record of rights being in favour of the respondents, no fault can be found at this stage with the authorities for rejecting the claim of the petitioners against grant of N.A. permission to the respondent Nos.2 to 9. It is also to be noted here that petitioners could not secure any injunctive relief from the civil Court during the pendency of the suit in relation to same property.

12.? As regards proceedings under section 59 of the Code, as already observed above, the petitioners have not been able to point out any provision which could disclose entitlement in favour of grantee under section 5(1) for resumption of land in favour of grantee in case of conveyance by the grantee itself which subsequently turned out to be in violation to provisions of section 5(3) of the Watan Abolition Act. On plain reading of section 59 of the

Code, it merely discloses Collector's powers to evict a person in unauthorised occupation of land. Section 5(3) of Watan Abolition Act imposes condition of requirement of permission prior to transfer of land. Needless to say that permission has to be prior to the conveyance of the land. However, that by itself is not sufficient to construe that land transferred by the grantee for valuable consideration having been rendered illegal in absence of prior sanction, would automatically revert the land to the grantee. Section 9 (1) of the Watan Abolition Act provides that where any watan land resumed under section 4 is in possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom by the Collector in accordance with the provisions of the Code, provided that where in case of any unauthorised holder, the State Government is of the opinion that in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or otherwise, the eviction of such holder from the land will involve undue hardship to him may direct the Collector to regrant the land to such holder on payment

of such amount and subject to such terms and conditions as the State Government may determine and the Collector shall regrant the land to such holder accordingly. Sub-section (2) thereof provides that Watan land which is not regranted under sub-section (1) shall be disposed of in accordance with the provisions of the Code and the rules made thereunder applicable to the disposal of the unoccupied unalienated land. In other words, plain reading of section 9 would disclose that after resumption of land if any person is found in unauthorised occupation thereof, he can be either evicted therefrom or in case where such person has done any development including conversion of land into non-agricultural use, the Government, as the facts and circumstances may demand, take appropriate decision to regrant land to such occupant himself on such terms and conditions as may be determined in the facts and circumstances of the case. Whereas, in the case where regrant under section 9 of the Watan Abolition Act is not found appropriate, disposal of the land has to be in accordance with the Land Revenue Code which obviously disclose that any person who is in possession of the

land which was resumed under section 4 in contravention of the provisions of the Watan Abolition Act, though can be evicted therefrom by the Government, on eviction of such person land has to be dealt with in accordance with provisions of the Code and not otherwise. It would disclose that a grantee in contravention of provisions of section 5(3) inducts a person in possession of the land regranted under section 5(3) such possession being unlawful, the authority under section 59 of the Code will have power to evict such person, but on eviction therefrom, land will have to dealt with in accordance with the provisions of the Code and the grantee would not be entitled for resumption thereof.

13.? The petitioners have not been able to point out any provisions contrary to the said provision of law. Being so, there is absolutely no case made out to interfere with the impugned order.

14.? As regards decision of the Apex Court in Murlidhar Kasekar's case (cited supra), that was a case where land was allotted to a tribal and the said Murlidhar had entered into an agreement

with the tribal-allottee for purchase of the land and permission sought for alienation was rejected by the Collector as well as by the Commissioner. Efforts to seek interference by the High Court had also failed and the matter came up before the Apex Court. It was also revealed that without necessary permission, actual transfer had taken place and in that connection the Apex Court had directed the Collector to resume land and to assign the same to the legal representatives of the original tribal-allottee. It is pertinent to note that such possession is in relation to allotment in favour of tribal in terms of policy of the Government to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segment of the society in particular, Scheduled Castes, the Scheduled Tribes and the Dalits. The Apex Court in the said judgment itself has quoted 4 lines from the poem by Nobel Prize Laureate Shri Rabindranath Tagore which reads :

> "Bowed by the weight of centuries he leans,
> Upon his hoe and gazes on the ground,
> The emptiness of ages on his face,
> And on his back the burden of the world"

It needs no further explanation to understand the ratio of the judgment in Murlidhar's case. By no stretch of imagination it can be applied to the situation, where the land has been regranted on abolition of watans which were enjoyed by Watandars during British regime.

15. In Manchegowda's case (supra), it was a case under Karnataka Schedule Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. The Apex Court clearly held that the legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interest of the Scheduled Castes and Scheduled Tribes for whose benefit only this land had been granted. It is not the case of the petitioner that regrant under section 5(1) of the Watan Abolition Act was for safeguarding and protecting interest of the people of weaker segment of the society.

16. No doubt, in this connection, attention was drawn to a Circular of the Government dated 7th April 1959, wherein it has been stated that the Watan Abolition Act is a very important piece of legislation and has far reaching consequences- social, economic and administrative. The contention is devoid of any substance. The petitioners would be certainly justified in contending that in case of transfer found to be in contravention of section 5(3), the concerned authority would be expected to take appropriate action in accordance with law. But that by itself will not be sufficient to contend that regrant which was made in favour of petitioner's predecessors was to safeguard interest of the weaker sections comprised of Scheduled Castes and Scheduled Tribes. The object behind the said Watan Abolition Act is undoubtedly, to abolish inferior village watans and on abolition such watans to utilise for the benefit of the occupants thereof which will also include watandars.

17. As regards the decision of the Division Bench of this Court in Vithal's case (supra), in that case, it was held therein that the Collector's

prior permission for transfer must be obtained and in spite of necessary payment of 10 times the assessment and if the Collector fails to grant permission, mandamus can be issued by the High Court. It was clearly held that it is the statutory duty of the Collector to grant sanction on payment of requisite amount and for removal of disability of non-transferability, payment and Collector's sanction, both are necessary. It was further observed that if any one is wanting, the transfer of occupancy would be in breach of condition attached to tenure. One fails to understand how the decision can be of any help to the petitioners, rather it supports the case on behalf of the respondent. The Division Bench though stated that to avoid breach of condition comprised in section 5(3) of the Watan Abolition Act, both requirements are to be applied, one regarding payment and other permission of the Collector, the Division Bench also observed that once required assessment amount is paid, the Collector is duty bound to grant sanction. In the case in hand, it is not disputed that assessment amount was duly paid. It is also not in dispute that in the course of hearing, the authorities have held

that there was no case for refusal of permission by the Collector which disclosed that on payment, Collector had no option but to grant sanction. In the circumstances, therefore, this decision also is of no help to the petitioner.

18. For the reasons stated above, the petition is liable to be dismissed. However, it is made clear that all observations herein made to arrive at finding about the absence of case for interference in the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India and the Civil Court shall decide the matter on merits without getting influenced in any manner with any of the observations herein, while deciding the civil suit.

(R.M.S.KHANDEPARKAR, J.)